

## **EXHIBIT 1**

### **INTRODUCTION**

Concerned Citizens for a Better West Covina (“Respondent Committee”) is a primarily formed ballot measure committee that was formed to support a measure that would have changed city council representation in the City of West Covina to be by district, rather than city-wide. This ballot measure, Measure D, was on the November, 2009 ballot. Respondent Committee filed its statement of organization in July, 2007 representing itself as a city general purpose committee. The committee reported no contributions from July 2007 through September 19, 2009. On September 20, 2009, the committee began receiving contributions. One hundred percent of its expenditures of these contributions were made to support the passage of Measure D.

Respondent Committee failed to properly identify itself as a primarily formed committee on mass mailings it sent out in support of Measure D before the November 2009 election. Respondent committee also made three late independent expenditures that were not properly reported.

At all relevant times, Dana Sykes was Respondent Committee’s treasurer.

In this matter, Respondents failed to properly identify Respondent Committee as a primarily formed committee (1 count), and failed to file a late independent expenditure report (1 count).

For the purposes of this Stipulation, Respondents' violations of the Political Reform Act<sup>1</sup> are stated as follows:

COUNT 1: Respondents failed to properly identify Respondent Committee as a primarily formed committee on mass mailings, in violation of Government Code section 84107.

COUNT 2: Respondents failed to file a late independent expenditure report by the October 29, 2009 for an expenditure made of \$2,285.81 on October 28, 2009, in violation of Government Code section 84204.

### **SUMMARY OF THE LAW**

An express purpose of the Act, as set forth in section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, and that the sender of mass mailings is fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. In furtherance of these purposes of disclosure, the Act requires ballot measure committees to file various periodic campaign statements disclosing the contributions they have received and the expenditures they have made. Section 82013, subdivision (a) defines a "committee" to include any person who receives contributions totaling \$1,000 or more per year.

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

### **Primarily Formed Ballot Measure Committees**

A “primarily formed committee” includes a committee that is formed or exists primarily to support or oppose a single measure, or two or more measures being voted on in the same city, county, multicounty, or state election. A committee is considered a primarily formed ballot measure committee if it spends 70 percent or more of its total contributions and expenditures on a single measure. (Section 82047.5 and Regulation 18247.5 (a)(2).)

### **Mass Mailings**

Within 30 days of the designation of the numerical order of propositions appearing on the ballot, any committee which is primarily formed to support or oppose a ballot measure, shall, if supporting the measure, include the statement, “a committee for Proposition\_\_\_\_” in any reference to the committee required by law. (Section 84107)

No committee shall send a mass mailing unless the name, street address and city of the committee are shown on the outside of each piece of mail of the mailing. (Section 84305)

### **Duty to Disclose Expenditures on Campaign Statements**

Section 82025 defines “expenditure” as a payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure can be either a monetary or nonmonetary payment made for political purposes. (Section 82025, subd.

(a) and Regulation 18225, subd. (a).) Section 84211, subdivision (b), requires candidates and their controlled committees to disclose the total amount of expenditures made during the period covered by the campaign statement as well as the total cumulative amount of expenditures made.

### **Late Independent Expenditures**

The Act requires that any committee that makes a late independent expenditure shall report the late independent expenditure by facsimile transmission, guaranteed overnight delivery, or personal delivery within 24 hours of the time that it is made. A committee that makes a late independent expenditure shall report its full name and street address. (Section 84204) A late independent expenditure means any independent expenditure which totals \$1,000 or more and is made for or against any specific measure involved in an election before the date of the election but after the closing date of the last campaign statement required to be filed prior to the election by a committee participating in such election. (Section 82036.5) The late independent expenditure reporting period for the November 3, 2009 election was October 18, 2009 through November 2, 2009.

### **Liability of Committee Treasurers**

As provided in Section 84100, every committee shall have a treasurer. Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. Under Sections 83116.5 and 91006, a committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

## **SUMMARY OF FACTS**

Respondent Committee is a primarily formed ballot measure committee that was formed to support a measure that would have changed city council representation in the City of West Covina to be by district, rather than city-wide. This ballot measure, Measure D, was on the November, 2009 ballot. Respondent Committee filed its statement of organization in July, 2007 representing itself as a city general purpose committee. The committee reported no contributions from July 2007 through September 19, 2009. On September 20, 2009, the committee began receiving contributions. One hundred percent of its expenditures of these contributions were made to support the passage of Measure D. Total expenditures made by the committee were eighteen thousand five hundred and eighty seven dollars (\$18,587).

Respondent Committee at no time amended its statement of organization to reflect in its name that it was a primarily formed ballot measure committee. It further failed to properly identify itself as a primarily formed committee on mass mailings it sent out in support of Measure D before the November 2009 election. The mailings identified the name of Respondent Committee, but did not identify that it was primarily formed to support Measure D.

Respondent committee also made three late independent expenditures that were not properly reported. The independent expenditures were each for mass mailings sent out supporting Measure D, as follows: \$2,110 on October 20, 2009; \$2,249 on October 23, 2009; and \$2,285 on October 28, 2009.

At all relevant times, Dana Sykes was Respondent Committee's treasurer.

## **COUNT 1**

### **(As to Respondent Committee)**

#### **Failure to Properly Identify Committee as Primarily Formed Committee on Mass Mailings**

Respondents failed to properly identify Respondent Committee as a primarily formed committee on mass mailings sent in support of Measure D in the City of West Covina, in connection with the November 2009 election.

By failing to properly identify Respondent Committee, Respondents committed a violation of Government Code Section 84107.

## **COUNT 2**

### **(As to Respondent Committee and Respondent Sykes)**

#### **Failure to File Late Independent Expenditure Report**

Respondents failed to file a late independent expenditure report by the October 29, 2009 for an expenditure made of \$2,285.81 on October 28, 2009, in support of Measure D in the City of West Covina, in connection with the November 2009 election.

By failing to file a late independent expenditure report, Respondents committed a violation of Government Code Section 84204.

## **CONCLUSION**

This matter consists of two counts of violating the Act carrying a maximum administrative penalty of \$10,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

### **AGGRAVATING FACTORS**

The facts of this case show a pattern of violations that, taken as a whole, resulted in a general lack of disclosure of Respondents' campaign activities. These disclosure violations are serious, in that Respondents' repeated failures to disclose required information about their campaign activities deprived the public of the very information they are entitled to receive under the Act. Additionally, the failure to identify themselves as a primarily formed committee could be seen as at worst intentional and at best negligent, as it concealed the true nature of the Respondent Committee.

### **MITIGATING FACTORS**

In mitigation, Respondents have no prior history of violating the Act, and cooperated with the Enforcement Division investigation of this matter.

## **PROPOSED PENALTY**

Failing to properly identify a committee as a primarily formed committee has no comparable past enforcement action under Section 84107. However, due to the public harm of the public not being able to identify that the true source of the mass mailings was a primarily formed committee, a penalty in the high range is recommended. Failing to file late independent expenditure reports has typically resulted in a low-to-mid range penalty. Accordingly, the facts and circumstances of this case justify a stipulated administrative penalty of six thousand dollars (\$6,000). Four thousand dollars (\$4,000) for Count 1, and two thousand dollars (\$2,000) for Count 2.